

**WILLKIE FARR & GALLAGHER**

Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20036-3384  
Tel: 202 328 8000  
Fax: 202 887 8979

January 15, 2002

**Copy Transmitted Electronically**

Andrew Stephens  
Director, Steel Trade Policy  
Office of the U.S. Trade Representative  
600 17<sup>th</sup> Street, N.W.  
Washington, D.C. 20508

Re: Request for Exclusion of High-Carbon Billet from Any Possible Remedy on  
Carbon Steel Slab

Dear Mr. Stephens:

On behalf of Connecticut Steel Corporation and Aço Minas Gerais (Açominas) we again urge the President to exclude high-carbon billets from any remedy that he may impose on flat-rolled products (slab). As we pointed out in our submission of December 4, 2001, the ITC found that imports of billets were not a substantial cause of serious injury to the domestic industry, and therefore imposing import restraints on billets would be contrary to US law and the international obligations of the United States. Nothing that has been submitted to the TPSC since our submission of December 4 contradicts this conclusion.

**The Written Definition of Billets Contained in the ITC's Determination is the Governing Determinant of Goods Subject to Import Remedies.**

This investigation, unlike the vast majority of investigations initiated under section 201 of the Trade Act of 1974, was initiated by request of the President, and not by

the domestic industry. Thus, it is the President and not the domestic industry who must determine whether a particular product is subject to investigation or not.

The President in this case requested an investigation of a wide range of products, grouped into four categories. The President included in this request a list of HTSUS tariff categories that were covered by the investigation. However, there is nothing in the President's request to indicate that the President considered the listing of HTSUS categories to define the products under investigation.

The ITC, upon initiating its investigation, simply adopted the TSUS number listings provided by the USTR without, apparently, much thought. However, when the ITC conducted its investigation, it provided a specific written definition of billets. The written definition of billets used by the ITC is:

Blooms and billets are semifinished products of rectangular cross-section with a width less than two times the thickness if of carbon steel, or less than four times the thickness if of other alloy steel.

This definition appears both in the questionnaire provided by the Commission to companies -- domestic and foreign -- participating in the investigation, and in the official definition used by the Commission in its determination. 66 Fed. Reg. 67304, 67308 (December 28, 2001).

Although the Commission also includes a listing of HTS classification numbers, there is no language indicating that the Commission intended the HTS listings to be determinative of the scope of the investigation. Indeed, the HTS classifications cannot be determinative because they are confusing and contradict the clear written definition of the product set forth by the ITC. Specifically, while the ITC's definition makes clear that

rectangular semifinished products with width less than twice thickness are billets, the ITC has listed high-carbon billets with width less than twice thickness as slab.

The problem arises because the HTS classifications are contradictory. For carbon billets, there is a clear HTS classification, item number 7207.11.00.00, which includes only semifinished products with length less than twice thickness. This category clearly encompasses only billet. There is a separate classification, 7207.12.00.10, for products with widths between two and four times thickness, and this product is included in the slab (flat-rolled category).

For high-carbon steel, however, there is only one category, 7207.20.00.25, encompassing all products with widths less than four times thickness. That is, this category clearly encompasses both billets (width less than twice thickness) and other products that arguably may not be billets (width between two and four times thickness). The President and the ITC have obviously included this HTS number among the listing of flat-rolled products because it encompasses some flat-rolled products that could be considered slab.

Whether a semifinished product is of high carbon or low carbon steel has absolutely no effect on whether it is a billet. The determinant of whether a product is a billet is its dimensions -- width less than two times thickness -- not its chemistry.

Where there is a discrepancy between the written description of the product and the TSUS category, the practice in Section 201 proceedings is that the written description governs. For example, in the ITC's recent determination on Wire Rod, the description of the product was stated as follows:

The imported article covered by this investigation is defined as hot-rolled bars and rods, in irregularly wound coils, of circular or approximately circular

solid cross section, having a diameter of 5 mm or more but less than 19 mm, of non-alloy or alloy steel, except such bars and rods of free-machining steel or of alloy steel containing by weight 24 percent or more of nickel. Free-machining steel is any steel product containing by weight one or more of the following elements, in the specified proportions: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium. Certain steel wire rod is provided for in subheadings 7213.91, 7213.99, 7227.20 and 7227.90.60 of the Harmonized Schedule of the United States (HTS). The scope of this investigation does not cover concrete reinforcing bars and rods, or bars and rods of stainless steel or tool steel, which are provided for in other HTS subheadings.

Products that were specifically excluded from that case -- such as free-machining steel -- enter under HTS subheadings listed above, but were nonetheless outside the scope of the investigation. Therefore, consistent with the Commerce Department's practice in antidumping and countervailing duty investigations, the narrative scope description and not the list of HTS subheadings control. If the HTS numbers formed the basis of the scope, it would prevent exclusion of products based on physical properties that do not correspond precisely to the HTS classifications. This is evidenced by the fact that some carbon wire rod is subject to the present 201 investigation. Such products fell into the category of products excluded from the scope of the Steel Wire Rod investigation based on the narrative description above.

In our case, the HTS category for high carbon steel is ambiguous, comprising products that are clearly billets as well as products that are arguably slab. The written definition used by the ITC, however, contains no such ambiguity: all semifinished products with a width less than twice thickness are slab, regardless of carbon content. Given the ambiguity of the HTS definition and the clarity of the written definition, it is clear that in this case the written definition should govern.

**Nothing in the ITC's Determination of December 28, 2001 Indicates That the HTS Classification Was Intended to Govern Over the Written Definition.**

On December 28, 2001, the ITC published its injury and remedy determination in this case. Nothing in that determination indicates that the HTS tariff classifications are intended to be determinative. Specifically, footnote 1 to the ITC's determination states:

Descriptions of the products covered by the investigation and their corresponding subheadings under the Harmonized Tariff Schedule (HTS) is {sic} presented in Appendix A.

Appendix A contains an exact, word-for-word repetition of the definition of the product as quoted previously, plus the statement, "Ingots are provided for in the following HTS subheadings." The subheadings are the same as provided in the ITC's earlier questionnaire. However, there is no language indicating that the HTS categories are intended to be definitional or in any way determinative of the scope of the products described. The simple statement that "ingots are provided for" in these categories does not in any way mean that all other HTS categories can be presumed to be something other than ingots.

To be sure, Appendix A to the Commission's opinion, as referred to in footnote 1, also includes a definition of slab. The written definition of slab is products with "a width at least two times the thickness." Thus, the written definition of slabs clearly excludes high carbon billets. The list of tariff categories included in slab does include HTS item 7207.20.00.25. Again, however, this begs the question, because that tariff category comprises both billets and products that may be considered slab (products with a width from two to four times thickness). The ambiguity in the tariff classification again contrasts with the clarity of the written definition, which makes clear that products with a width less than twice thickness are not slab.

In short, the statement in footnote 1 of the ITC's decision suffers from the same flaws as the definition itself. It depends on Appendix A, which contains written definitions that are clear and unambiguous, and listings of HTS categories that are confusing and contradictory. Under the circumstances, the written definition should govern.

**The US Flat-rolled Industry Does Not Object to the Exclusion of High Carbon Billets from Any Import Restraints that the President May Impose on Flat-Rolled Products.**

We believe that the US industry has not expressed any coherent opposition to the request that high-carbon billets not be included in any remedy the President may ultimately impose on flat-rolled products. The producers of flat-rolled products, Bethlehem Steel, LTV, National Steel and US Steel have stated explicitly that they "have no objection to excluding billets and blooms from relief {on slab products}, as the ITC made a negative determination regarding billets and blooms."<sup>1</sup> If any producers should know what products are slab and what are not, it is these four large, integrated producers of slab. Since these slab producers have no objection to excluding these products from relief on slab, it is obvious that they understand that high carbon billets are not slab. It clearly makes no sense to impose restrictions on such billets because they have been included in an HTS category that may include slab.

At least two US producers of billets, Bayou Steel Corporation and Kentucky Electric Steel, Inc., support the exclusion of these billets from any restrictions the President may impose on flat-rolled steel. Attached to this submission are copies of the letters submitted by both companies supporting this exclusion.

---

<sup>1</sup> Submission of Bethlehem Steel, National Steel, LTV Steel and United States Steel, December 20, 2001, Slab Products Section, 2.

In contrast to the specific support for exclusion from these two companies, the only opposition to the exclusion comes in a single offhand reference by the Minimill Coalition (Long Products), which says that “the Commission conducted its injury investigation based on the scope description and tariff classifications set forth early in the process”, and that “the time has long passed” for any party to question that determination.<sup>2</sup>

This statement wholly begs the question. The fact that the Commission conducted its investigation “based on the scope description and tariff classification” fails to take account of the fact that the scope description is inconsistent with the particular tariff classification at issue. As we have pointed out at length, in this case the scope description must govern because it is clear whereas the tariff classification is ambiguous.

Moreover, it is questionable what standing the Minimill (Long Products) Coalition has standing to object to the exclusion of billets. As previously noted, the restrictions that would be imposed on high-carbon billets, if any, would be the relief that applies to slab, because HTS item 7207.20.00.25 is listed as a slab category. Thus, any “protection” afforded the domestic industry by relief would be protection on slab production. The domestic slab producers, however, have no objection to the exclusion of these products from relief on slab. The “opposition” of the Minimill Coalition, therefore, totally lacks rational support and must be discounted.

---

<sup>2</sup> The entire statement by the Minimill Coalition is as follows: “Finally, we note that exclusion requests have been made with respect to certain semifinished products, such as billets, whose tariff classification is as a flat product, rather than a long product. we oppose such requests. The Commission conducted its injury investigation based on the scope description and tariff classifications set forth early in the process. We must assume that these products were reported properly by all producers during the investigation. Based on this data and all other record evidence, the Commission found that semifinished flat products were seriously injured, while semifinished long products were not. The time has long passed for any party to now claim that a particular steel item is a long product rather than a flat product.” Comments of the Minimill Coalition, Long Products, January 4, 2002 at 32.

**Conclusion**

For all the above reasons, as well as the reasons set forth in our prior submissions, the President should exclude billets -- semifinished products of rectangular cross-section with a width less than twice their thickness -- from any relief he may ultimately impose on slab.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Christopher Dunn", with a long horizontal flourish extending to the right.

Christopher Dunn

*Attorney for Aço Minas Gerais*





# Kentucky Electric Steel, Inc.

P. O. Box 3500 • Ashland, Kentucky 41105-3500 • 606/929-1222

CHARLES C. HANEBUTH  
CHAIRMAN & PRESIDENT

January 11, 2002

Mr. Andrew Stephens  
Director for Steel Trade Policy  
Office of the U.S. Trade Representative  
600 17th Street, N.W.  
Washington, DC 20508

Dear Mr. Stephens:

I am writing to express the position of Kentucky Electric Steel, Inc., a U. S. producer of carbon steel billets, that we do not object to the exclusion of high-carbon steel billets, currently classified under HTSUS item 7207.20.00.25, from any remedy that the President may impose on semi-finished flat-rolled products.

Billets or blooms are defined in the industry as semi-finished steel products of rectangular cross-section, with a width less than four times the thickness. Kentucky Electric Steel itself produces billets with a 3:1 ratio. The U.S. International Trade Commission found that imports of billets or blooms are not a substantial cause of serious injury to the U. S. Industry. This conclusion must relate to both high-carbon and low-carbon billets, because billets are not defined by their carbon content. Billets, of whatever carbon content, are different from slab and cannot be used for the purposes that slab is used for. Therefore, we believe that high-carbon billets should be excluded from any remedy that the President may impose on flat-rolled products.

The HTS includes no definition of "slab," "billet" or "bloom." In organizing the collection of data for the steel Section 201 case, the Commission included five HTS numbers covering "semifinished" products to describe "slab": 7207.1200.10, 7207.1200.50, 7207.2000.25, 7207.2000.45 and 7224.9000.55. Three of those categories require a product whose width is at least four times its thickness. The other two (which cover only carbon steel) – 7207.2000.25 and 7207.2000.45 – include products whose width is less than four times its thickness. The Commission suggested that, while the four to one ratio is a minimum requirement for products made from alloy steel, carbon products with a two to one ratio would be considered slab. (The Commission thereby acknowledged that use of the 7207.2000.25 and 7207.2000.45 headings would cover products that are not slab under any definition.)

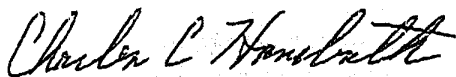
**Page 2**

**KES is aware of no justification for defining the dimensions of slab based upon any distinction between carbon and alloy steel. While the end products may have different uses, the production of plate and sheet of alloy steel is exactly the same process as with carbon steel. Similarly, the production of carbon and alloy slab uses precisely the same melting and forming equipment. Thus, there is no basis for using different dimensions for the two products.**

**We wish to add that the importation of billets is important to the health of U.S. producers such as Kentucky Electric Steel, Inc. Although we make our own liquid steel, we also import billets for those products that we either can not make or can not produce in sufficient quantities. We need to be able to import billets to compete with imports of downstream products that we produce.**

**For these reasons, we respectfully ask you to exclude billets from any remedy that you may impose on flat-rolled products.**

**Sincerely,**



**Charles C. Hanebuth  
Chairman and President**

January 15, 2002

Mr. Andrew Stephens  
Director for Steel Trade Policy  
Office of the U.S. Trade Representative  
600 17<sup>th</sup> Street, N.W.  
Washington, D.C. 20508

Dear Mr. Stephens:

Bayou Steel Corporation is unique in our position that we do not support the imposition of tariffs as recommended by the USITC.

As a U.S. producer of carbon steel billets, we do not object to the exclusion of high-carbon steel billets, currently classified under HTSUS item 7207.20.00.25, from any remedy that the President may impose on semifinished flat-rolled products.

Billets are defined in the industry as semifinished steel products of rectangular cross-section, with a width less than twice the thickness. The U.S. International Trade Commission found that imports of billets are not a substantial cause of serious injury to the U.S. industry. This conclusion must relate to both high-carbon and low-carbon billets, because billets are defined by their dimensions and not by their carbon content. Billets, of whatever carbon content, are different from slab and cannot be used for the purposes that slab is used for. Therefore, we believe that high-carbon billets should be excluded from any remedy that the President may impose on flat-rolled products.

We wish to add that the importation of billets is important to the health of U.S. producers such as Bayou Steel Corporation. Although we make our own liquid steel, we also import billets for those products that we either cannot make or cannot produce in sufficient quantities. We must be able to import billets to compete with imports of downstream products that we produce.

For these reasons, we respectfully ask you to exclude billets from any remedy that you may impose on flat-rolled products.

Mr. Andrew Stephens  
Director for Steel Trade Policy  
January 15, 2002  
Page 2

Additionally, as a producer of light structural shapes, we believe the inclusion of HTSUS items 7216.22.00 and 7216.40.00 as heavy structural shapes and sheet piling is in error and that the very definition is flawed by using "80mm or more" as the defining dimension.

Mills producing heavy structurals do not produce much volume less than 200mm. We therefore believe HTSUS items 7216.22.00 and 7216.40.00 should be redefined to read "200mm or more." This definition change should also be applied to HTSUS item 7216.10.00. All three items should then be placed in the category of bar shapes and light structurals under the Section 201 investigation.

Sincerely,  
BAYOU STEEL CORPORATION

Jerry M. Pitts  
President and COO